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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MARGUERITE WALKER,

9 Plaintiff,

v.

10 UNITED STATES OF AMERICA,

11 Defendant.
12

CASE NO. C17-5921 BHS

ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS

13 This matter comes before the Court on Defendant United States of America's
14 ("Government") motion to dismiss. Dkt. 27. The Court has considered the pleadings
15 filed in support of and in opposition to the motion and the remainder of the file and
16 hereby denies the motion for the reasons stated herein.

17 **I. PROCEDURAL AND FACTUAL BACKGROUND**

18 Plaintiff Marguerite Walker ("Plaintiff") filed her claims based on the death of her
19 husband George Walker. Mr. Walker served approximately eight years in the United
20 States Air Force, which qualified him for medical care provided by the United States
21 Department of Veterans Affairs ("VA"). Dkt. 1, ¶¶ 3.4, 3.5.
22

1 Between 2012 and 2016, doctors at the American Lake Veterans Hospital
2 evaluated Mr. Walker at least five times. Dkt. 28-2 at 4. On June 14, 2012, VA medical
3 staff documented that Mr. Walker had a heart murmur. *Id.* However, on subsequent
4 visits no medical staff noted or evaluated Mr. Walker for this murmur. *Id.*

5 On June 21, 2016, Mr. Walker “presented to the American Lake urgent care . . .
6 with a chief complaint of difficulty breathing and chest pain with minimal activity.” *Id.*
7 Mr. Walker was subsequently transferred to the Seattle VA Hospital by ambulance for
8 evaluation. *Id.* At the Seattle hospital, the cardiothoracic surgical team recommended
9 surgery. *Id.* at 5. Mr. Walker was discharged on June 23, 2016, to await surgery
10 scheduled for July 11, 2016. *Id.* On July 1, 2016, Plaintiff found her husband
11 unresponsive in their front yard and called for emergency medical attention. *Id.* When
12 medical personnel arrived, they were unable to resuscitate Mr. Walker, and they
13 “pronounced [him] dead at the scene due to sudden cardiac death.” *Id.*

14 On April 24, 2017, Plaintiff filed an administrative claim. Dkt. 21-2. Plaintiff
15 stated the basis of the claim as follows:

16 On June 23, 2016 Mr. Walker was evaluated at the Seattle VA
17 hospital. He was diagnosed with critical aortic stenosis. Instead of being
18 admitted for emergent surgery, Mr. Walker was discharged with an
19 appointment for surgery scheduled for July 12, 2016. Mr. Walker was also
discharged on beta blockers. Mr. Walker died at home on the morning of
July 1, 2016 awaiting his heart surgery. Veteran died waiting for care on a
surgical wait list.

20 *Id.* The Government failed to act on the claim, and Plaintiff filed this suit when the
21 Government’s allotted time expired. *Id.*

1 On November 7, 2017, Plaintiff filed a complaint against the Government
2 asserting claims for medical negligence, negligence, informed consent, and corporate
3 negligence. Dkt. 1.

4 On April 18, 2019, the Government filed a motion to dismiss. Dkt. 27. The
5 Government asserts that the first time Plaintiff disclosed her claim for a failure to
6 diagnose was in her pretrial statement delivered on March 21, 2019. *Id.* The
7 Government argues that the Court lacks jurisdiction over the claim because Plaintiff
8 failed to give fair notice of the claim in her administrative claim. *Id.* On May 6, 2019,
9 Plaintiff responded. Dkt. 42. On May 10, 2019, the Government replied. Dkt. 43.

10 II. DISCUSSION

11 As sovereign, the Government is immune from suit unless it consents to be sued.
12 *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Any waiver of immunity is to be
13 strictly construed in favor of the United States. *United States v. Nordic Villages, Inc.*,
14 503 U.S. 30, 33-34 (1992). The Federal Tort Claims Act (“FTCA”) is a limited waiver of
15 sovereign immunity that permits claims to be brought against the United States for the
16 “negligent or wrongful act or omission of any employee of the Government while acting
17 within the scope of his office or employment.” 28 U.S.C. § 1346(b)(1). In order to bring
18 an FTCA claim against the United States, a plaintiff must have presented the claim to the
19 appropriate federal agency and then the claim must have been finally denied by that
20 agency. 28 U.S.C. 2675(a). Thus, exhaustion of the administrative remedy is a
21 jurisdictional prerequisite to filing an FTCA action. *McNeil v. United States*, 508 U.S.
22 106, 113 (1993).

1 In this case, the parties dispute the specificity of Plaintiff’s administrative claim.
2 The Government concedes that Plaintiff filed an administrative claim but contends that
3 the claim form did not include a claim for failure to diagnose. Dkt. 27 at 7–11. “[T]he
4 prerequisite administrative claim need not be extensive.” *Goodman v. United States*, 298
5 F.3d 1048, 1055 (9th Cir. 2002). “[T]he notice requirement . . . is minimal, and a
6 plaintiff’s administrative claims are sufficient even if a separate basis of liability arising
7 out of the same incident is pled in federal court.” *Id.* Beyond these standards, the parties
8 do not provide and the Court is unable to locate any Ninth Circuit authority that provides
9 further guidance to the issue at hand, except for the Circuit’s statement that “[w]e have
10 prior precedent supporting a generous notice interpretation” *Id.* at 1056. Looking
11 outside this Circuit, in *Goodman*, the Ninth Circuit cited *Burchfield v. United States*, 168
12 F.3d 1252 (11th Cir. 1999) with approval. *Goodman*, 298 F.3d at 1055. There, the
13 Eleventh Circuit stated that “[a]n administrative agency is deemed to be on notice not
14 only of the theories of recovery stated in the claim, but of the theories of recovery that its
15 reasonable investigation of the specific allegations of the claim should reveal.”
16 *Burchfield*, 168 F.3d at 1255.

17 In this case, the Court finds that Plaintiff provided sufficient information such that
18 a reasonable investigation would have uncovered the prior medical note of a heart
19 murmur and the potential subsequent failure to diagnose the murmur from 2012–16. The
20 Government concedes that Plaintiff provided Mr. Walker’s medical records with the
21 administrative claim and that those records “encompassed Mr. Walker’s prior care”
22 Dkt. 27 at 9. Thus, Plaintiff explicitly put the Government on notice that she was

1 asserting a claim based on Mr. Walker's death from severe aortic stenosis. A reasonable
2 investigation of Mr. Walker's prior medical records would have uncovered the prior
3 medical note of a murmur and the failure to provide such a diagnosis at any of his
4 appointments from 2012–16. Therefore, Plaintiff exhausted her administrative remedies,
5 and the Court has jurisdiction to consider her failure to diagnose claim.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that Government's motion to dismiss, Dkt. 27,
8 is **DENIED**.

9 Dated this 13th day of May, 2019.

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12 BENJAMIN H. SETTLE
United States District Judge

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